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UNITED STATES DISTRICT COURT

ROBERT H. SHERWELL, CLERK  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE, LOUISIANA

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

JODY MECHE, ET AL

CIVIL ACTION NO. 05-0385

VERSUS

JUDGE DOHERTY

GLENN RICHARD

MAGISTRATE JUDGE METHVIN

**MEMORANDUM ORDER**

Pending before this Court is a Motion to Designate Order Appealable filed on behalf of the defendant, Glenn Richard. Mr. Richard previously filed a Motion to Dismiss the plaintiffs' claims on the grounds that: (a) subject matter jurisdiction does not exist because the plaintiffs' claims are not properly characterized as having an admiralty nature; and (b) punitive damages are not available under maritime law. By order dated August 9, 2005, this Court denied the defendant's Motion to Dismiss and the current pending motion seeks certification of that order pursuant to 28 U.S.C. §1292(b).

In order to certify an order as appealable, a court must determine that the order (i) involves a controlling question of law (ii) as to which there is substantial ground for difference of opinion and (iii) that an immediate appeal from the order may materially advance the ultimate termination of the litigation. 28 U.S.C. §1292(b). While the defendant is correct that questions related to subject matter jurisdiction are particularly appropriate for immediate certification in many circumstances, this Court finds that the case at bar is not one of them. According to the allegations contained within the plaintiffs' complaint, Mr. Richard intentionally stood on the bank of a navigable waterway and shot a rifle toward the plaintiffs' boat while they were in the boat, which was in the navigable waterway and which they were using for catching frogs, and he took these actions for the specific

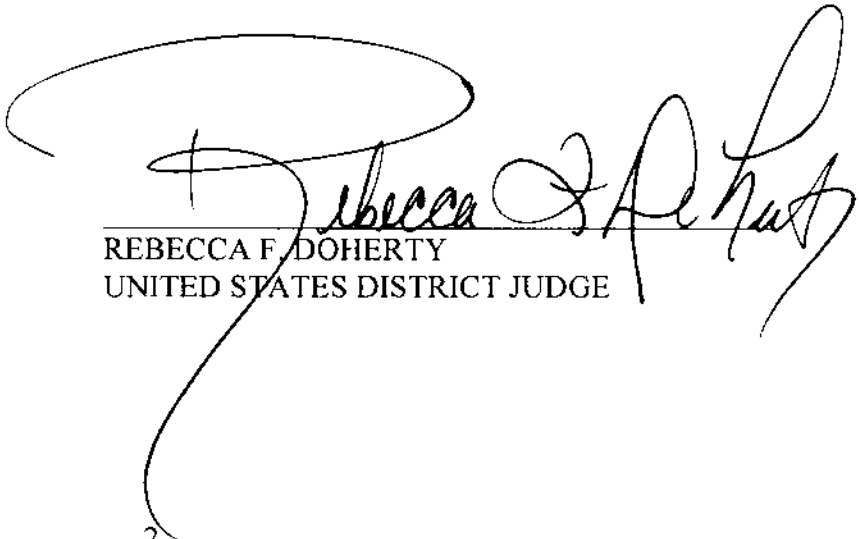
purpose of driving them out of that particular waterway that particular evening. Given the allegations that the defendant's actions had an effect on a navigable waterway, and that it was his intention and purpose to disrupt fishing activities occurring in that waterway, this Court finds that, under the facts of this case, there is no substantial ground for difference of opinion that the plaintiffs' claims are admiralty in nature.

As to the punitive damages issue, this Court agrees with the defendant that the availability of punitive damages under maritime law is, indeed, a controlling question of law here and that there is substantial ground for difference of opinion; however, this Court finds no reason to believe that the prompt resolution of that question by the Fifth Circuit would materially advance the termination of this lawsuit because it is by no means clear that the facts have yet been sufficiently developed to permit the Fifth Circuit to address the question as a matter of law.

For these reasons,

IT IS HEREBY ORDERED that the Motion to Designate Order Appealable [Doc. 14] shall be and is DENIED in its entirety.

THUS DONE AND SIGNED in Chambers, Lafayette, Louisiana, this 7 day of November, 2005.



REBECCA F. DOHERTY  
UNITED STATES DISTRICT JUDGE